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THE INTERIM

AUGUST 1999

HELENA, MONTANA

VOL. XII NO. 3

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

To Meet in August...The first interim meeting of the Children, Families, Health, and Human Services Committee will be held August 20 in Helena at the Federal Building in Room B-7 (basement). The meeting will begin at 9 a.m., and the tentative agenda includes:

- an overview of the Committee's duties and responsibilities;
- an overview of the Department of Public Health and Human Services;
- brief progress reports on the HJ 35 Subcommittee on Mental Health Managed Care;
- the tobacco settlement; and
- the National Guard Youth Challenge Program.

Public testimony will be received in the afternoon. The Committee is especially interested in what topics the public believes are important for study and monitoring over the interim. The Committee will wrap up its meeting by developing and adopting a study plan for the remainder of the interim. The meeting is expected to adjourn by 5 p.m.

If you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, by e-mail at <sfox@state.mt.us>, or by mail to: Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

MENTAL HEALTH MANAGED CARE SUBCOMMITTEE

Subcommittee to Meet in August...The first meeting of the Mental Health Managed Care Subcommittee will be August 19 in Helena at the Federal Building in

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Room B-7 (basement). The meeting will begin at 8 a.m. and will include a morning panel discussion on "What is Mental Illness?" and an afternoon session on children's mental health services. The Subcommittee will also adopt a study plan and meeting schedule for the interim.

For further information or to be placed on an interested persons list, please contact Lois Steinbeck, Legislative Fiscal Analyst, (406) 444-2986 or Susan Byorth Fox, Research Analyst, (406) 444-3597.

DISTRICTING AND APPORTIONMENT COMMISSION

Fifth Member Yet to Be Appointed...The first four members of the Districting and Apportionment Commission are still awaiting appointment by the Supreme Court of the fifth member who will serve as presiding officer. The Commission will meet after the fifth member is selected and is expected to meet occasionally throughout the interim. The Commission's charge is to redistrict the state for both the congressional and legislative districts following the 2000 census. By January 1, 2001, the state will learn whether an additional congressional seat will be gained in the reapportionment of congressional seats. The census data is expected in the first months of 2001, when redistricting will begin in earnest. In the meantime, the Commission will be preparing through background research, adopting a timetable for the process, selecting criteria, and making decisions on data and methodology.

If you wish to be placed on the interested persons list, please contact Susan Byorth Fox by phone at (406) 444-3597, e-mail: sfox@state.mt.us, or mail to: Legislative Services Division, PO Box 201706, Helena MT 59620-1706.

BUSINESS, LABOR, AND AGRICULTURE COMMITTEE

Committee to Study Government Competition with Private Vendors...Should government be doing everything that it is doing? Is the state interfering with private vendors and thus harming them by directly competing for services and clients? What government functions should be turned over to the private sector? How should the decisions be made? What if there are no private vendors capable of providing the service? How should the state ensure that those services are being offered effectively and efficiently? Who should make those decisions? Is efficiency more important than effectiveness? Is this question a matter of the role of government, economic development, free market competition, or all three and more?

There is no shortage of opinions, beliefs, and comments on the merits, myths, and problems surrounding the issue of governments that compete with private sector vendors in the production of goods and services. House Bill 515, passed during the 1999 legislative session, requested that the Business, Labor and Agriculture Committee (BLAC) study the issue of government competition with private sector

service vendors and specifically identify how that competition impacts private vendors. An attempt to answer this question in a manner which satisfies both sides of this issue could last several interims, much less the 1999-2000 cycle. Thankfully, the bill suggests a track on which decision makers can focus their attention. Specifically, BLAC is encouraged to investigate the feasibility and desirability of privatizing the sale of goods, specific services, manufacturing, construction, and repair activities conducted by the State.

With the path identified, the task of the BLAC this interim is to discard that which can be identified as misperception, develop a sound and responsible policy recommendation about how best to ensure that the role of government is well-defined, and balance the needs of the public with the increasingly important quest to spur economic development in Montana. Essential to this task is the need to uncover cases where governments are competing with private vendors; determine a way, if possible, to reduce or eliminate any unfair competitive advantages realized by the State; and, if necessary, develop a plan to manage that competition.

In essence, the Committee will determine the where, when, how, and why of governments offering services that are currently available from private entities; and whether some, all, or none of those services should be open to competition or simply removed from the State's stable of responsibilities.

Availability of Vendors...Instinctively, decision makers recognize that if a choice is made regarding the lifting of competitive advantages enjoyed by the State, there must be in place some method of ensuring the services formerly offered by governments are taken over by private sector vendors. In other words, there needs to be an available vendor, possibly more than one, to make the privatization effort worthwhile. This reflects the bill's intent. Clearly, some services offered by governments are not economically viable services for private vendors to provide. Judging from the number of citizens, special interest groups, and public employees who have already expressed an interest in contributing their perspectives to the debate, this issue will be the focal point of the Committee's interim activity.

Four topics keep rising to the surface. The first is a requirement that governments employ full cost accounting principles to better facilitate a comparison between private vendors and government providers. Second, the regulatory role of government agencies influences the ability of a private vendor to compete fairly. Third, governments must have the authority and the ability to control the quality of services provided by entities other than the State. Finally, privatization efforts must recognize the impact they have on public sector employees. These questions and concerns form the broad foundation of the HB 515 study.

Cost Accounting and Government Regulation...Proponents of privatization propose that government cost accounting needs to be modified to identify all cost components of producing goods or delivering a service. These groups argue that the State, by nature of its position, has an inherent advantage over private service providers based on the methodology employed to determine the cost of providing a service. Requiring the State to comply with a cost analysis consistent with the evaluation used by private companies will result in a true comparison and better

information for decision makers.

Another concern of privatization proponents occurs on the regulatory side of government activity. Governments that compete, proponents argue, should not in turn regulate those with whom they compete. A possible solution would be to reassign regulatory functions to an independent agency.

Interest Group Concerns...While it is difficult to find people who are outright opposed to privatization, a number of interest groups and public officials are seeking to ensure that their clients, namely the citizens they serve, receive the quality of service they expect and at a price they can afford.

Similarly, organized labor petitions for meaningful protections for their members. As has happened in other states that have privatized various services, reductions in force are generally designed to occur through attrition, vacancy savings, early retirement incentive packages offered by government entities, and even contract stipulations with private vendors that any displaced workers are considered for hire before a general hiring call is issued. A similar approach may need to be discussed in Montana.

Providing Effective and Efficient Services...A critical component of addressing the topic of government competition is the necessity of designing a sensible framework for private vendors to position themselves to fill the needed role of service providers. Thus, as the Committee delves into cases of the State competing with private entities, they will continually have to frame out how best to manage the process to ensure that the service being provided is effective, cost-efficient, and ultimately accountable to the client, all the while being mindful of the role of government and how that role influences decisions made in the private sector.

Committee to Meet in October...The BLAC will meet on October 8 in Helena to begin its exploration of the government competition issue. Please feel free to contact Gordy Higgins if you need additional information or have issues you'd like the Committee to address. He can be reached at 406-444-9280 or by e-mail at <gohiggins@state.mt.us>.

LEGISLATIVE SERVICES DIVISION

LIBRARY

Committee Minutes...Thanks to special efforts by House and Senate session staff and Legislative Services technical support staff, records for 1999 Montana legislative committees were all finalized and stored electronically before the move out of the Capitol. The original paper records and meeting tapes have been transmitted to the Historical Society Archives (444-7482). Legislative Library staff (444-3064) can provide copies from the electronic records. The Law Library has paper copies of the minutes.

The Legislative Services Division will be publishing committee minutes on

CD-ROM. The CD will include the electronic version of the minutes and scanned images of all exhibits (except for lengthy items). We are hoping to make information from this CD available at the Branch web site.

Special Session Materials...Legislative staff are currently working on converting exhibits from the Special Session committee meetings to electronic format. If you are interested in seeing a particular set of minutes or in checking on the status of a committee record, please call 444-3064 and ask for Beth, Lenore, or Dianna in the Legislative Library.

Monthly Publication Lists...Each month, the Legislative Library produces lists of publications added to the collection and of periodical articles relevant to our work. Several legislators receive these lists regularly. If you'd like to be added to the mailing list (or to receive the lists by electronic mail), just call or send a request to Beth at the Legislative Services Division (444-3064).

Note that while copying is not a problem for books that are state publications or otherwise in the public domain, other titles have been purchased for staff use in support of interim committee activity. We may not be able to send you the office reference copy of these publications, but usually can help you locate the particular information you're after or find a copy of a book in a library near to you. All questions are welcome.

LEGISLATIVE COUNCIL

Council to Meet at Yellow Bay...The Legislative Council will meet August 26 and 27 at the University of Montana Biological Station at Yellow Bay on Flathead Lake. In an atmosphere free of pressing immediate business, the Council will identify long-range issues that represent strengths or weaknesses of, opportunities for, or threats to the Legislative Branch and identify directions for formulating strategies responding to those issues. The directions thus identified will form the core of the Council's work agenda for the balance of the interim.

Business meeting in September...The next business meeting of the Council is set for September 17 in Helena. The agenda is not set for that meeting, but it will include an in depth update on the Capitol renovation project and a review of ongoing interim work, in addition to other business that may arise.

LAW, JUSTICE, AND INDIAN AFFAIRS COMMITTEE

Committee to Tour Women's Prison...On September 16 and 17, the Law, Justice, and Indian Affairs Committee will gather in Billings for its second meeting of

the 1999-2000 interim. The agenda is still being finalized, but a significant portion of the meeting will focus on House Joint Resolution No. 37 (HJR 37), a study of women's prison issues.

The Committee will spend part of the day on the 16th touring the Montana Women's Prison (MWP). Members will discuss with Warden Jo Acton and her staff the directives included in HJR 37, which provides that the study:

- review the classification system and the extent to which it takes into consideration the unique characteristics of women inmates and whether nonviolent inmates are treated at the appropriate levels of incarceration;
- review the length of stay, the calculation of parole eligibility and discharge dates, and the timeliness of parole hearings for women inmates at the Montana Women's Prison and in any out-of-state or regional contract placements;
- review the utilization of public and private training and educational programs for women offenders, such as AmeriCorps and Job Training Partnership Act of 1982 (JTPA) programs;
- explore the use of legal drugs and any evidence of abuse of legal and illegal drugs within the Montana Women's Prison and any out-of-state or regional placements and the availability and quality of chemical dependency and mental health treatment programs and aftercare; and
- examine the ability of the system to funnel women inmates into the least restrictive environment during their incarceration in order for them to be able to access training and education to enhance their future ability to obtain and maintain employment, learn parenting skills, be reunited with their families, become productive members of society, and prevent recidivism.

The Committee will also receive an update on plans for the expansion of MWP, funded by the 1999 Legislature through the issuance of general obligation bonds (\$2.9 million in House Bill No. 14) and with federal funds (\$6,475,000 authorized in House Bill No. 5). The expansion, scheduled to be completed in 2003, will increase the capacity of the prison from 70 average daily population (ADP) to 250 ADP.

Wheeler Conference...Legislators should have received by now the notice and registration information for the Burton K. Wheeler Conference on Native American sovereignty scheduled for August 26 and 27 at Cavanaugh's Colonial Motel in Helena. The LJAC will not be holding a formal meeting at that time, but members are encouraged to attend, as are all legislators and members of the public who may have an interest in sovereignty issues. The event is free (except for a \$10.00 lunch charge for those wishing to participate in the luncheon activities) and will include as panelists former state senator and current Regional EPA Director Bill Yellowtail, Attorney General Joe Mazurek, and Associate Secretary for Indian Affairs Kevin Gover. For conference information and registration materials, call the Wheeler Center at

994-0336.

For information on the LJAC or to be added to the Committee's mailing list, contact Leanne Kurtz, Committee staff, by e-mail at <Lekurtz@state.mt.us> or by phone at 444-3064.

REVENUE AND TAXATION COMMITTEE

Next Meeting in September...The Revenue and Taxation Committee is scheduled to meet Thursday, September 23 at the Department of Transportation, 2701 Prospect Ave., Helena. The major item on the agenda is a presentation from the Department of Transportation. Representatives of the Department will provide a general overview of the Department's organization, mission, goals, and program activities. The public is invited to comment on the activities of the Department of Transportation. Other tentative agenda items include:

- revenue sources for creating a housing trust fund;
- proposal to examine alternatives to current debt ceiling limits for local taxing jurisdictions;
- update on the sale of electrical generation assets in Montana to PP&L-Global;
- progress report on the implementation of HB 174 related to the revised taxation of electrical generation property;
- status of legal challenge by Montanans for the Coal Trust to the enactment of HB 260, concerning the imposition of a coal producer's license tax as an illegal diversion of revenue from the coal severance tax trust fund;
- progress report on the implementation of SB 184 related to residential and commercial property tax relief, revised property tax limitations, and "unified" property tax reimbursement method for local governments;
- revenue report on fiscal year 1999 collections;
- Committee program evaluation and monitoring responsibilities under SB 11, including procedures to review rules promulgated by the Departments of Revenue and Transportation; and
- review of work plan for the 1999-2000 biennium.

Additional details about the upcoming meeting will be provided in the September issue of **THE INTERIM**. Contact Jeff Martin by calling (406) 444-3064 or by e-mail at <jmartin@state.mt.us> for more information about the September meeting or about the Revenue and Taxation Committee in general.

EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee to Hold Second Meeting...The Education and Local Government Committee will hold its second meeting on Thursday and Friday, September 30-October 1 in Room B7 of the Federal Building in Helena. Tentative agenda items include:

- a presentation by the Education Commission of the States;
- general overviews of the Office of Public Instruction, the Board of Public Education, and the Office of the Commissioner of Higher Education;
- adoption of study plans for House Joint Resolution No. 29 (study of local government laws) and House Joint Resolution No. 38 (employment and salary issues of juvenile probation officers); and
- public comment on any issues on the agenda or within the jurisdiction of the Committee.

Subcommittee to Meet...On Thursday, September 30, the Postsecondary Education Policy and Budget Subcommittee will meet in Room B7 of the Federal Building. For more information about the Subcommittee, please contact Sandy Whitney, Legislative Fiscal Division, (406)444-2986.

For more information about the Education and Local Government Committee or to be placed on the interested persons' list, please contact Connie Erickson at (406)444-3064 or at <cerickson@state.mt.us>.

STATE ADMINISTRATION, PUBLIC RETIREMENT, AND VETERANS' NEEDS COMMITTEE

Committee to Meet in September...Agency overviews, background on state contracting laws, and an update on implementation of the new, defined contribution retirement plan will fill the agenda for the State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee (SAIC) meeting in Helena on September 9-10, 1999. The exact time and place of the meeting has yet to be determined.

The SAIC will also review a proposed study plan and decide how to focus its efforts to fulfill its interim responsibilities, which includes examination of state contracting laws and practices, postretirement health care costs, public employee disability benefits, and monitoring of activities of the Department of Military Affairs, Department of Administration, Office of the Secretary of State, and the Commissioner of Political Practices office.

The September meeting is the first of eight two-day meetings scheduled for the SAIC and initiates the background and information gathering phase of the interim committee's work. Public comment is welcome and encouraged at each meeting of the SAIC on any state administration, public retirement, or veterans' issues and on any

item on the SAIC's agenda.

For more information or to be placed on the interested persons mailing list to receive meeting notices and agendas, please contact Sheri Heffelfinger, Research Analyst, Legislative Services Division, PO Box 201706, Helena, MT 59620-1706, at (406) 444-3064, or by email at <sheffelfinger@state.mt.us>.

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LOOKING OVER OVERSIGHT

by Sheri Heffelfinger, Research Analyst
Legislative Services Division

o-ver-sight *n.* 1. a superintendence; supervision
2. an unintentional, careless mistake or omission
(Webster's Dictionary, Second College Edition)

INTRODUCTION

The word "oversight" is conspicuously absent from the statutory language enacted by Senate Bill No. 11, which restructured the legislature's interim functions, established six permanent statutory interim committees, and assigned to each committee "rule review, program evaluation, and monitoring" duties over specified executive branch agencies. Was the omission an oversight? No. In fact, it was deliberate. Nevertheless, as each interim committee breaks ground on its SB 11 duties, each will be planting the seeds of its own interpretations; and future legislatures and interim committees will reap the harvest. And, despite the deliberate omission, "oversight" has already found its way into interim committee vocabulary.

WHAT'S IN A NAME?

Defining oversight, however, is somewhat problematic. According to Webster's, "oversight" either refers to a superintendence, or is an unintentional mistake. It is a noun, not a verb. Again according to Webster's, a superintendent is someone who is in charge of a department or institution, that is, someone who manages and directs. Oversight, therefore, implies that an oversight committee would act like a superintendent. But, in the context of legislative interim committees, oversight is not the same as the management authority given to the executive branch. Rather, it is the exercise of legislative policymaking power beyond the act of legislating. Ah, there's the rub. Just where is the boundary between appropriate legislative "oversight" and micro managing?

The nearest approach to immortality on earth is a government bureau. — James F. Byrnes, Speaking Frankly, 1947

LEGISLATIVE POWER THAT ISN'T LAWMAKING

Just what are the legislative powers that extend beyond enacting laws? Certain legislative duties and responsibilities, besides legislating, are

well-established and typically associated with oversight powers, including the powers to:

- appropriate money;
- conduct financial and performance audits;
- hold investigative hearings, subpoena documents and witnesses, and place people under oath;
- specify administrative rule-making procedures and review processes, including how rules may be challenged or amended;
- approve executive appointments;
- statutorily reorganize executive agencies; and
- impeach elected officials.

The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. -- Louis D. Brandeis, dissenting opinion, Meyers v. United States, 1926

A DISTINCTION WITHOUT A DIFFERENCE?

So, why back away from the word "oversight" when outlining interim committee duties and responsibilities in the SB 11 language? Perhaps the answer lies partly in the need to provoke careful attention to this question of meaning.

To give continuity to its exercise of legislative powers, a legislature needs a broad-based process for evaluating the effects of the

Farming looks easy when your plow is a pencil, and you're a thousand miles from the corn field. -- Dwight D. Eisenhower, speech in Peoria, Illinois, Sep 25, 1956

legislation it passes (or fails to pass). To borrow from the musings of Legislative Council Executive Director Bob Person, most successful corporations engage in strategic goal setting. This involves an on-going cycle of planning, designing, implementing, monitoring, and integrating findings back into the planning cycle for a new round of planning, modifying, implementing, monitoring, feedback, planning, modifying, and so on. Sounds bureaucratically boring, right? Kind of like watching grass grow?

PRACTICALLY SPEAKING

But, let's move to the practical for a moment, to the actual language from SB 11 that

is now part of section 5-5-215, Montana Code Annotated:

"(1) Each interim committee shall:

(a) review administrative rules within its jurisdiction;

(b) conduct interim studies as assigned;

(c) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action; and

(d) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work."

Now that's inspiring! Well, maybe not. But it does have a recurrent theme: interim committees should monitor agencies with an eye toward improving laws and policies through future legislation.

THE POLICYMAKING LOOP

Whether it is called "oversight" or "monitoring", whatever "it" is, it is essential to achieving continuity in legislative policymaking. Legislatures legislate, but also need a way to assess the effects that legislative actions have had (intended or unintended),

and to develop
c o n c l u s i o n s .

Conclusions can then be translated into legislation to either adjust policy or enact different policies.

As a fellow legislative

Government can easily exist without law, but law cannot exist without government. -- Bertrand Russell, "Ideas That Have Helped Mankind", Unpopular Essays, 1950

research analyst recently wrote, "oversight is an opportunity to observe public policy once it leaves the realm of legislative decision making". (There's that word "oversight" again. But, the real meaning is contained in "to observe".) Nonetheless, even if no specific legislation results from the acts of observing and evaluating, the information obtained and the opportunity for legislators to learn about how the laws are being executed is valuable, perhaps even essential, to effective policymaking.

THE SLINGS AND ARROWS OF OVERSIGHT FORTUNES

To fulfill the essential role of observing the effects of policy after the act of legislating, legislators must take on a role that may not be comfortable. According to Alan Rosenthal of Rutgers University, the following factors make oversight challenging:

- Legislators want to find and fix problems and be seen as effective in the public eye, but oversight may not result in startling revelations or the unearthing of facts that command the public's attention.
- Legislators expect concrete results, but oversight often involves long hours of sitting through informational hearings and listening to reports, which is (to use a quote from a legislative staffer interviewed by Rosenthal) "like serving penance for having passed the legislation".
- Legislators typically want to avoid stirring up more trouble than they already have to handle individually, but an oversight committee's activities can be unsettling to executive agencies and stir up antagonisms.
- Legislators, especially in part-time legislatures, have a limited amount of time to spend to monitor agency programs, which means oversight committees must carefully prioritize issues and activities.
- Legislating is a relatively short-term endeavor for legislators, while oversight involves a longer-term process.

The science of legislation is like that of medicine in one respect: that it is far more easy to point out what will do harm than what will do good. -- Charles Caleb Colton, Lacon, 1825

SO, WHERE'S THE BEEF?

To use a quote recently used by a fellow research analyst, Woodrow Wilson once observed: "Quite as important as legislation is vigilant oversight of administration."

So, if oversight or, for lack of an adequate definition of "oversight", if monitoring of the bureaucracy is as important as all that, then what are the ingredients for success? Ralph Craft of Rutgers University studied legislative oversight in several states and suggests the following recipe:

- Approach oversight with a positive attitude (he was not only addressing legislators, but staff and executive agency program administrators as well).
- Have modest, realistic expectations (i.e., recognize that entire programs cannot be changed overnight and that there are practical limits to legislative intervention).
- Link oversight activities with non-oversight legislative process either by producing substantive legislation for legislative sessions or by integrating

recommendations with other formal legislative processes such as the audit and appropriations processes.

- Identify oversight topics that meet the following criteria: (1) there is an identifiable problem, (2) a legislative solution is possible, and (3) the committee and the staff have the time and resources to adequately address the problem.
- Be willing to "hang in" for the long haul (i.e., recognize that implementation of recommendations may require more than one session or one interim).

OVERSIGHT, BY ANY OTHER NAME?

Whether we call it monitoring or observing, isn't "it" still oversight by any other name? Legislative research staff recently pondered this question and wondered whether, because of the intentional omission of "oversight" from SB 11, the term should even be used in interim committee study plans. We reached no consensus on the matter, though we did agree that each interim committee will define for itself whatever "it" is.

One thing is sure, the terminology in (and left out of) SB 11 has forced considerable thought about the meaning of legislative oversight and its proper relationship to the legislative function.



INTERIM CALENDAR

AUGUST

- August 19, Mental Health Managed Care Subcommittee, Federal Building, Room B7
- August 20, Children, Families, Health, and Human Services Committee, Federal Building, Room B7, 8 a.m.
- August 26-27, Legislative Council, Yellow Bay, Flathead Lake

SEPTEMBER

- September 6, Labor Day, holiday
- September 9-10, State Administration, Public Retirement, and Veterans' Needs Committee
- September 16-17, Law, Justice, and Indian Affairs Committee, Billings
- September 17, Legislative Council
- September 22-23, Environmental Quality Council, Libby
- September 23, Revenue and Taxation Committee, Dept. of Transportation, 2701 Prospect Ave., Helena
- September 24, Electrical Utility Restructuring Transition Advisory Committee
- September 30, Postsecondary Education Policy and Budget Subcommittee, Federal Building, Room B7

OCTOBER

- October 1, Education and Local Government Committee, Federal Building, Room B7
- October 8, Business, Labor, and Agriculture Committee
- October 11, Columbus Day observed, holiday

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